

**HOLTZMAN VOGEL PLLC**  
*Attorneys at Law*

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SEP 1 2010  
2010 AUG 31 AM 10:48  
OFFICE OF GENERAL  
COUNSEL

45 North Hill Drive  
Suite 100  
Warrenton, VA 20186  
p/540-341-8808  
f/540-341-8809

August 31, 2010

Christopher Hughey, Esq.  
General Counsel's Office  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

***Re: Response in MUR 6326 of:***

***American Association of Physician Specialists, Inc.;  
American Association of Physician Specialists, Inc. Political Action Committee;  
William Carbone;  
Stephen Montes; and  
Anthony Durante.***

Dear Mr. Hughey,

This Response is submitted by the undersigned counsel on behalf of: American Association of Physician Specialists, Inc. (AAPS); American Association of Physician Specialists, Inc. PAC (AAPS PAC); William Carbone; Stephen Montes; and Anthony Durante, in response to the Complaint designated as Matter Under Review 6326.

The Complaint in this matter was filed by Timothy Bell, the former Director of Governmental Affairs of AAPS. Mr. Bell's employment with AAPS was terminated by AAPS in February 2010 for repeated instances of failure of perform job requirements and responsibilities and various violations of AAPS internal policies. Subsequent to his termination, Mr. Bell stated to an independent contractor retained by AAPS that he wished to ruin or "take down" both AAPS and its Chief Executive Officer, Mr. Carbone. See Affidavit of Linda Murphy, ¶ 2. Mr. Bell has continued to send harassing correspondence to AAPS personnel, including as recently as August 19, 2010. The Complaint submitted by Mr. Bell should be viewed in light of these facts.

**Statement of Facts**

1. Prior to March 2008, AAPS PAC's bank account was with Bank of America. In February 2008, AAPS made the decision to move the PAC's bank account to SunTrust. (This decision was made after AAPS experienced difficulties with its credit card processor making deposits into its Bank of America account.)

2. On or about March 6, 2008, AAPS opened a new PAC account with SunTrust. In order to avoid disruptions, AAPS kept its Bank of America account open so that pending transactions could settle. Temporary checks and deposit slips were issued to the PAC by SunTrust for use until personalized checks were received.

3. At approximately the same time, AAPS moved a second account (known as the AAPS National Initiative Fund, or "NIF") from Bank of America to SunTrust. For the same reasons set forth above, both accounts were held open for a short period. Temporary checks and deposit slips were issued to AAPS by SunTrust for use until personalized checks were received.

4. In April 2008, it was discovered that AAPS's bookkeeper accidentally confused the two sets of temporary deposit slips and deposited funds intended for the PAC account into the National Initiative Account. As a result, AAPS feared that checks written on its PAC account could be returned due to insufficient funds caused by the mis-deposited funds. While the mis-deposited funds discovered at this time were relatively modest, AAPS feared a larger problem could exist. In order to avoid checks being returned by reason of insufficient funds, and not yet aware of the actual scope of the problem, AAPS temporarily transferred \$20,000 from AAPS's general operating account to the new SunTrust PAC account on April 2, 2008, to ensure adequate funds for all checks written.

5. After AAPS was confident that it had properly assessed the extent of the confusion relating to mis-deposited funds, and was confident that no transactions would be rejected due to insufficient PAC funds, on April 15, 2008, \$14,465.00 of the \$20,000 transferred to the PAC account was re-transferred back to the AAPS general operating account.

Below are details of the transactions referenced in Paragraphs 4 and 5 above:

<i>Date</i>	<i>Amount</i>	<i>Action</i>
March 10, 2008	\$500	NIF funds deposited in PAC account
March 10, 2008	\$50	PAC funds deposited in NIF account
March 11, 2008	\$800	NIF funds deposited in PAC account
March 11, 2008	\$100	PAC funds deposited in NIF account
April 2, 2008	\$20,000	Transfer from Operating Account to PAC account
April 4, 2008	\$50	Transfer from NIF to PAC
April 4, 2008	\$100	Transfer from NIF to PAC
April 4, 2008	\$500	Transfer from PAC to NIF
April 4, 2008	\$800	Transfer from PAC to NIF
April 15, 2008	\$14,465.00	Transfer from PAC to Operating Account

During the period in which the \$14,465 from the AAPS general operating account was in the PAC account (April 2, 2008 through April 15, 2008), AAPS PAC made four disbursements totaling \$718.95 (as reflected on its FEC reports):

- April 2, 2008, credit card processing fee to Global Payments, \$47.00
- April 3, 2008, credit card processing fee to American Express, \$5.95

- April 8, 2008, contribution to Audrey Gibson Campaign, \$500.00
- April 15, 2008, bank service charge to Bank of America, \$165.90

Throughout this period (April 2, 2008 through April 15, 2008) AAPS PAC's cash on hand figure far exceeded \$718.95. The PAC reported \$36,623.80 cash on hand as of April 1, 2008, and \$36,373.98 cash on hand as of June 30, 2008, on its 2008 second quarter report.

In other words, the funds that were temporarily transferred from the AAPS general operating account were never used by the PAC or disbursed in any way. No corporate funds were spent by AAPS PAC.

6. The remaining amount, \$5,535.00, was to remain in the PAC account until such time as the bank account move from Bank of America to SunTrust was completed, all issues regarding credit card deposits were resolved, and a full audit of the PAC account was completed.

7. Beginning in April 2008, AAPS experienced personnel changes in its financial and government affairs departments, along with three separate audits (unrelated to this matter). These intervening events caused AAPS to delay undertaking the planned audit of its PAC accounts.

8. Timothy Bell was hired as Director of Governmental Affairs on October 1, 2008. He was made aware of all issues relating to the PAC account, including the transfer of funds from the AAPS general operating account, within his first month of employment. Any suggestion by Mr. Bell to the contrary is incorrect.

9. By late March 2009, all audits were complete, and it was determined that all credit card deposits had been processed by AAPS's former credit card processing company. On April 3, 2009, the \$5,335.00 remaining in the PAC account from the earlier transfer was transferred back from the PAC account to the AAPS general operating account.

An examination of AAPS PAC's financial reports shows that its cash on hand figures, see below, far exceeded \$5,535 throughout the period the remaining general operating account funds were in the PAC account.

The following cash-on-hand figures are reflected on AAPS PAC's PEC reports:

- June 30, 2008: \$36,373.98
- Sept. 30, 2008: \$23,377.85
- Oct. 15, 2008: \$23,376.35
- Nov. 24, 2008: \$23,826.35
- Dec. 31, 2008: \$24,113.54
- March 31, 2008: \$23,374.10
- June 30, 2008: \$32,575.08

As was the case above, the remaining funds that were temporarily transferred from the AAPS general operating account were never used by the PAC or disbursed in any way. At no time did AAPS PAC spend any of the AAPS general operating account funds.

**Request For Prompt Consideration and Referral to Alternative Dispute Resolution**

Due to the fact that none of the general operating account funds that were transferred as a precautionary measure to the PAC account were ever used or disbursed in any way, coupled with the malicious nature of the complaint, AAPS and AAPS PAC request that this matter be considered expeditiously through the Alternative Dispute Resolution process. AAPS and AAPS PAC are eager to cooperate with the FEC in resolving this matter.

Sincerely,



Jason Torchinsky  
Michael Bayes  
Counsel to AAPS and AAPS PAC